

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO**

LUZ MORALES-MELECO, ET AL.,

## Plaintiffs,

V.

UNITED STATES OF AMERICA,

**Defendant.**

Civil No. 13-1311 (SEC)

## **MEMORANDUM AND ORDER**

Before the Court are the third-party defendants' motions to dismiss, Docket ## 70, 78, and the third-party plaintiff's opposition thereto. Dockets ## 73, 85. After reviewing the filings and the applicable law, these motion are **DENIED**.

## Background

This is a medical malpractice case under the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2671-2680, against the United States of America. The nub of the plaintiffs' case is that the defendant's negligent medical treatment precipitated the demise of Emilio Matos-Martinez (Matos). As relevant here, on July 9, 2014, the defendant filed an amended third-party complaint against Hospital Universitario Dr. Ramon Ruiz Arnau, Dr. Ricardo Rosario-Mendoza, and Dr. Minely Martinez Velazquez (collectively, Commonwealth Defendants), alleging that they are liable as joint tortfeasors for Matos's death. See generally Docket # 54.

The Commonwealth Defendants move to dismiss for failure to state a claim upon which relief could be granted. Docket # 70; see Fed. R. Civ. P. 12(b)(6).<sup>1</sup> Specifically, they claim that (1) the United States failed to notify the Commonwealth of Puerto Rico within the 90-day notification period prescribed by Puerto Rico law, *id.*, p. 7; (2) because they are not joint

<sup>1</sup>Martinez Velazquez's request to join that motion to dismiss, Docket # 78, is granted. Her additional request for dismissal under Federal Rule of Civil Procedure 12(b)(6) is denied, however, for substantially the same reasons set out in the third-party plaintiff's opposition. Docket # 85. See also Garcia-Catalan v. United States, 734 F.3d 100, 104-105 (1st Cir. 2013).

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2 tortfeasors, the contribution claims fail, id., p. 10; and (3) the United States has no right under  
3 Puerto Rico law to transfer any liability to the Commonwealth Defendants because they had to  
4 be joined within the one-year statute of limitations for tort actions. Id., p. 15.

5 The United States timely opposed. Docket # 73. The Court considers these matters  
6 sequentially.

7 **Discussion**

8 Federal Rule of Civil Procedure 12(b)(6) authorizes the dismissal of a complaint that  
9 fails to state a claim upon which relief could be granted. To avoid dismissal, a complaint must  
10 provide “a short and plain statement of the claim showing that the pleader is entitled to relief.”  
11 Fed. R .Civ. P. 8(a)(2). At the pleading stage, the plaintiffs need not demonstrate likelihood of  
12 success, but their claims “must suggest more than a sheer possibility that a defendant has acted  
13 unlawfully.” García-Catalan v. United States, 734 F.3d 100, 102-03 (1st Cir. 2013) (quoting  
14 Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)). The courts must also accept “the plaintiff’s factual  
15 allegations and draw[ ] all reasonable inferences in the plaintiff’s favor.” Maloy v. Ballori-Lage,  
16 744 F.3d 250, 252 (1st Cir. 2014) (citing Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570  
17 (2007)). For its part, Federal Rule of Civil Procedure 14(a)(4) allows “[a]ny party to move to  
18 strike the third-party claim, to sever it, or to try it separately.” Although this rule does not  
19 explicitly provide for a motion to dismiss third-party claims, “[t]he federal courts have  
20 entertained both motions to dismiss and to strike and have not drawn distinctions between  
21 them.” Zurich Am. Ins. v.Lord Elec. Co., 828 F. Supp. 2d 462, 467 (D.P.R. 2011) (citing 6  
Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure  
§1460 (3d ed. 2011)).

22 As detailed above, the Commonwealth Defendants first argue that Puerto Rico Law 121,  
23 P.R. Laws Ann. tit. 32, §§ 3077-3092(a), requires that tort actions against the Commonwealth  
24 of Puerto Rico be notified to its Secretary of Justice within 90 days from the date in which the  
25 injured party knew of the injury. It is true that no prior notice was given to the Commonwealth.  
26 But even assuming, dubitante, that Law 121 applies to each third-party defendant (the doctors

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2 are obviously private citizens) and extends to third-party complaints, Law 21 does not carry the  
3 day for the Commonwealth Defendants.

4 The Court need not tarry long here. It suffices to say that the Puerto Rico Supreme Court  
5 has made it clear that “the previous notice [requirement] . . . does not reach the level of  
6 preceding jurisdiction condition.” Melendez Gutierrez v. The Commonwealth of Puerto Rico,  
7 13 P.R. Offic. Trans. 1044, 1048 (1983) (quoting Loperena Irizarry v. E.L.A., 6 P.R. Offic.  
8 Trans. 506, 509 (1977)) (internal quotation marks omitted). And here, as in Melendez Gutierrez  
9 (a medical malpractice case involving a Commonwealth-operated hospital), “the risk of the  
10 object evidence’s disappearance is minimal . . . there is effective proof of the identity of the  
11 witnesses, and . . . the State may easily investigate and corroborate the facts alleged . . .”  
12 Melendez Gutierrez, 13 P.R. Offic. Trans. at 1049. So, where, as in this case, “the government  
13 entity does have its own means to know of the damage suffered by a claimant without outside  
14 notice . . . the Puerto Rico Supreme Court has taught that the statutory notice is unnecessary .  
15 . . .” Leon v. Municipality of San Juan, 320 F.3d 69, 73-74 (1st Cir. 2003); see also id. at 74  
16 (“the Hospital’s records themselves unquestionably gave San Juan knowledge of the damage  
17 to Raymanuelle based on which Plaintiffs’ claim is filed without any need for further  
18 notification from Plaintiffs . . .”). The Court follows that sensible principle here, agreeing with  
19 the United States, Docket # 73, p. 4, that the statutory notice, even if applicable to third-party  
20 claims for contribution, is unnecessary in this case.

21 The Commonwealth Defendants next contend that they are not joint tortfeasors—so as  
22 to be impleaded under Federal Rule of Civil Procedure 14(a)(1)—because, in their view, the  
23 medical malpractice claims at issue are neither geographically nor temporally linked. Docket  
24 # 70, pp. 11-12. The United States counters, alleging that, shortly after it discharged Matos, the  
25 Commonwealth Defendants negligently treated him; and that Matos died shortly thereafter.  
Therefore, it submits that the tortious event are sequentially related. Docket # 73, p. 11. The  
United States has the better argument.

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2 Federal Rule of Civil Procedure 14(a)(1) prescribes when and how a defendant may sue  
 3 a non-party: “A defending party may, as third-party plaintiff, serve a summons and complaint  
 4 on a nonparty who is or may be liable to it for all or part of the claim against it. . . .” Fed. R. Civ.  
 5 P. 14(a)(1). This rule thus “contemplat[es] the availability of third-party practice when a  
 6 non-party is or may be liable for all or part of the plaintiff’s claim against the defendant.”  
 7 Lehman v. Revolution Portfolio L.L.C., 166 F.3d 389, 393 (1st Cir. 1999) (internal quotation  
 8 marks omitted). The amended third-party complaint, then, conforms to Rule 14 if the United  
 9 States shows that, if it were found liable to the plaintiffs, it would have a right under Puerto  
 10 Rico law to transmit some of its liability to the Commonwealth Defendants. Because “[P]uerto  
 11 Rico is a comparative negligence jurisdiction that imposes joint and several liability on joint  
 12 tortfeasors,” Ruiz Troche v. Pepsi Cola, 161 F.3d 77, 87 (1st Cir. 1998) (citing Ramos Acosta  
 13 v. Caparra Dairy, Inc., 16 P.R. Offic. Trans. 78, 81-82 (1985)), “[t]he right to contribution,  
 14 known as ‘niveling’ is allowed as between joint tortfeasors . . . .” Wojciechowicz v. U.S., 474  
 15 F.Supp.2d 291, 295 (D.P.R. 2007) (citations omitted); see Rodriguez v. Suzuki Motor Corp.,  
 16 570 F.3d 402, 410 (1st Cir. 2009). In short, Rule 14 is the adequate procedural mechanism for  
 17 joining other tortfeasors. See, e.g., Fernandez v. Corporacion Insular De Seguros, 79 F.3d 207,  
 18 210 (1st Cir. 1996) (interpreting Puerto Rico law and observing that it allows defendants to  
 implead a joint tortfeasor under Rule 14) (citation omitted).

19 Applying these legal precepts to this case—and taking the amended third-party  
 20 complaint’s allegations as true, as the Court must at this stage—it follows that the  
 21 Commonwealth Defendants are putative joint tortfeasors. See Arroyo Lopez v. Hosp. Dr.  
Dominguez, Inc., 262 F.R.D. 93, 95 (D.P.R. 2009); Nunez v. Horn, 336 F.Supp. 447, 450  
 22 (D.P.R. 1970) (holding that physician sued for negligent medical treatment and the person whose  
 23 alleged negligence provoked the event that led to the hospitalization were joint tortfeasors,  
 24 “irrespective of whether [the hospitalization was] rendered in a . . . negligent manner”). The  
 25 Commonwealth Defendants resist this conclusion, invoking Lopez de Robinson v. United  
 26 States, 162 F.R.D. 256 (D.P.R. 1995). But that non-binding case is distinguishable. There, two

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2 separate tortious events transpired in the span of four to five days. *Id.* at 257. Here, in contrast,  
 3 the multiple acts of alleged negligence occurred within 36-48 hours. Docket # 1, pp. 3-6. So the  
 4 Commonwealth Defendants, as putative joint tortfeasors, were properly impleaded under Rule  
 5 14. Accord Arroyo Lopez., 262 F.R.D. at 95; Garcia Colon v. Garcia Rinaldi, 340 F. Sup. 2d  
 6 113, 128 (D.P.R. 2004) (holding that under Puerto Rico law physicians can be found jointly and  
 7 severally liable in medical malpractice action if their multiple acts or omissions together are  
 responsible for harm alleged). That ends this aspect of the matter.

8 The Commonwealth Defendants have one last arrow in their quiver. They argue that  
 9 under Puerto Rico tort law, a third-party plaintiff must bring other alleged tortfeasors within the  
 10 one-year statute of limitations furnished by Article 1868(2) of the Puerto Rico Civil Code, P.R.  
 11 Laws Ann. tit. 31, § 5298(2). Docket # 70, pp. 15-20. They bet the house on Fraguada Bonilla  
 12 v. Hospital Auxilio Mutuo, 186 P.R. Dec. 365 (2012) (certified translation provided by the  
 13 third-party defendants at Docket # 45), in which the Puerto Rico Supreme Court held that the  
 14 filing of a tort action against one tortfeasor no longer interrupts the statute of limitations for the  
 15 other tortfeasors. See generally, e.g., Ramirez-Ortiz v. Corporacion Del Centro Cardiovascular  
 16 De Puerto Rico y Del Caribe, 994 F. Supp. 2d 218, 223 (D.P.R. 2014) (construing and  
 17 discussing Fraguada). This argument is hopeless.

18 The short answer is that, irrespective of Fraguada, the one-year statute of limitations for  
 19 a plaintiff to sue all known tortfeasors is inapplicable to third-party complaints for contribution,  
 because contribution claims accrue at a different time than a plaintiff's underlying tort claim.  
 20 Indeed, “while the right of contribution does not accrue before judgment is satisfied, an alleged  
 21 joint tortfeasor defendant may at the outset of litigation implead all who by their concurrent  
 22 negligence might be liable to him for contribution . . . .” Corning Glass Works v. Puerto Rico  
 23 Water Resources Authority, 396 F.2d 421, 423 (1st Cir. 1968) (emphasis added); compare id.  
 24 with Tokyo Marine & Fire Ins. Co. v. Perez & Cia., De Puerto Rico, Inc., 142 F.3d 1, 3 (1st Cir.  
 25 1998) (“A cause of action under article 1802 accrues—and the prescriptive period set by article

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2 1868(2) therefore begins to run—when the injured party knew or should have known of the  
3 injury and of the likely identity of the tortfeasor.” (citing Colon Prieto v. Geigel, 115 P.R. Dec.  
4 232, 243 (1984))). Accord Mojica-Diaz v. United States, No. 11-1755, 2013 WL 1909608, at  
5 \*4 n. 3 (D.P.R. May 8, 2013). It thus follows, without serious question, that the United States  
timely impleaded the Commonwealth Defendants.

6 **Conclusion**

7 For the reasons stated, the third-party defendants’ motions to dismiss are **DENIED**.

9 **IT IS SO ORDERED.**

10 In San Juan, Puerto Rico, this 7th day of November, 2014.

11 *s/Salvador E. Casellas*  
12 SALVADOR E. CASELLAS  
U.S. Senior District Judge